

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 775 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A K PATEL

Versus

STATE OF GUJARAT

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR MR RAVAL,AGP for Respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/10/96

ORAL JUDGEMENT

This petition under Article 226 of the Constitution challenges the non-consideration of the petitioner's case for promotion to the post of Depot Vehicle Operator.

2. The petition was filed as far back as on 9th August 1984 and admitted on 18th February 1985. Further

promotions to the post of Depot Vehicle Operators were ordered to be subject to the result of the petition. During the course of hearing of the petition, learned Counsel for the petitioner has submitted an application for amendment of the petition which is duly served on the respondent and is granted.

3. Recruitment to the post of Depot Vehicle Operator is governed by Depot Vehicles Operator Recruitment Rules, 1970 (hereinafter referred to as the Recruitment Rules). The Recruitment Rules provide for appointment of Depot Vehicle Operator by direct selection or by promotion of suitable drivers of proved merits and efficiency. A copy of the said statutory Recruitment Rules dated 1-10-1970 is at Annexure B to the petition.

4. Ms.Vasavdatta Bhatt, learned counsel appearing for the petitioner has submitted that the petitioner has worked as a driver or Assistant Depot Vehicle Operator for the last about 25 years. According to the petitioner, the incumbents of the posts of driver and Assistant Depot Vehicle Operator are inter transferable and therefore from 1971 onwards, except for a short period, when the petitioner was reverted as a Helper in 1973, the petitioner has been assigned duties either as a driver or Assistant Depot Vehicle Operator. Details of the said postings are given in para 2 of the petition. It is therefore, submitted that the petitioner ought to have been considered as eligible for promotion to the post of Depot Vehicle Operator even under the existing Recruitment Rules The present petition has been filed for ventilating the petitioner's grievance that the petitioner is not even considered for promotion to the post of Depot Vehicle Operator merely because the petitioner has been working as an Assistant Depot Vehicle Operator and not as a driver.

5. The learned Counsel for the petitioner has submitted in the alternative that looking to the duties of the Assistant Depot Vehicle Operator, they are more or less akin to to the duties of the Depot Vehicle Operator and therefore, the Recruitment Rules would be required to be struck down as arbitrary if the Assistant Depot Vehicle Operators are held to have been excluded from consideration for promotion to the post of Depot Vehicle Operator and only drivers are considered eligible for promotion to the said post. Learned Counsel has heavily relied on the duty chart dated 12th August 1996 prepared by the Manager, Government Transport Service Gandhinagar. In fact Assistant Depot Vehicle Operator has to assign duties to the drivers during the night hours and has to

make arrangement for sending the vehicles to motor mechanic in case of break down. He has also to receive telephonic messages at night.

6. The respondents have not filed any affidavit-in-reply, but Mr.M.R.Raval, learned Asstt. Govt.Pleader appearing for the respondents has submitted that in view of the statutory recruitment rules at Annexure B to the petition, Assistant Depot Vehicle Operators cannot be considered to be eligible for promotion to the post of Depot Vehicle Operator.

7. Having heard the learned Counsel for the parties, it appears that the petitioner has been working either as driver or as Asstt. Depot Vehicle Operator for last 25 years, and the authorities themselves have treated the incumbents of the two posts as inter-transferable. In that view of the matter and also in view of the authoritative duty chart on record, it cannot be gainsaid that the rule making authority did not intend to, or could not have intended to exclude the Asstt. Depot Vehicle Operators from consideration for promotion to the post of Depot Vehicle Operator. Unfortunately, the respondents have not chosen to assist the Court by filing an affidavit either to explain the Rules or to defend their action or to be more accurate, their inaction. One cannot, however, help drawing an inference that the post of Asstt. Depot Vehicle Operator was in all probability not in existence at the time when the Recruitment Rules for the post of Depot Vehicle Operators were framed in 1970. A perusal of the duty chart also substantiates the above inference.

8. It would also be safe to presume that the rule making authority was not oblivious of the well recognized principle of public administration that provision for promotion increases efficiency of the public service, while stagnation reduces efficiency. In the case of Dr.Ms.O.Z.Hussain Vs. Union of India and others, AIR 1990 SC 311 the Hon'ble Supreme Court has recognised the above principle in the case of Council of Scientific & Industrial Research Vs. K.G.S.Bhatt and another, AIR 1989 SC 1972 the Apex Court has observed:

".... It is often said and indeed, adroitly, that an organization public or private does not hire a hand' but engages or employs a whole man. The person is recruited by an organization not just for a job but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important

feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well (See: Principles of Personnel Management by Flipo Edwin B. 4th Ed.P.246). Every management must provide realistic opportunities for promising employees to move upward. "The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale and ineffectual performance, among both nonmanagerial employees and their supervisors" (See Personnel Management by Dr. Udai Pareek p.277). There cannot be any modern management much less any career planning, manpower development, management development, etc. which is not related to a system of promotions. (See Management of Personnel in Indian Enterprises by Prof.N.N.Chatterjee, Chap.12, P. 128). The appellant appears to have overlooked this basic requirement of management so far as respondent 1 was concerned till N.R. and A.S. were introduced."

9. In view of the above discussion, it has to be held that the Assistant Depot Vehicle Operators and drivers constitute a common feeder cadre for promotion to the post of Depot Vehicle Operator and therefore, the respondents are required to be directed to consider the petitioner as eligible for promotion to the post of Depot Vehicle Operator.

10. In the view that I am taking, it is not necessary to consider the alternative and wider challenge raised by the petitioner against validity of the Recruitment Rules.

11. In the result, the petition is allowed. The respondents are directed to consider the petitioner as eligible for promotion to the post of Depot Vehicle Operator and to consider the petitioner's case for promotion to the said post within a period of two months from the date of receipt of the writ of this Court or from the date of receipt of a certified copy of this judgment, whichever is earlier. It is further directed that if the petitioner is found fit for promotion, the respondents shall also consider the appropriate date with effect from which the petitioner shall be promoted as Depot Vehicle Operator keeping in mind the combined seniority of Asstt. Depot Vehicle Operators and drivers.

12. Rule is made absolute to the aforesaid extent
with costs.

...